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THE DILEMMA OF COVERT ACTION

AN INDIVIDUAL STUDY PROJECT

by

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U.S. Army War College  
Carlisle Barracks, Pennsylvania 17013  
20 April 1989

# ABSTRACT

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## THE DILEMMA OF COVERT ACTION

### CHAPTER I

#### INTRODUCTION

In the late part of the twentieth century we are going to face in many countries, not only in Central America, a determined effort by the Soviet Union to subvert friendly governments. Now when they do that, using great violence, do the American people really want their president, faced with the question of whether a friend like Salvador or Korea or Israel is being attacked, to have no other options than to go to war or to do nothing? I don't think so.

Now...should we or should we not have some intermediate option of policy, covert action?...I think the American people have to wrestle with that question.

-Robert McFarlane, national security adviser, Meet the Press, May 13, 1984

Covert actions, an important component of our Nation's foreign policy, are approved and conducted in secret. Over the past eight years under the Reagan Administration, improperly conducted covert action programs have been the subject of extensive media coverage, public concern, and legal/political maneuvering. These activities, which range from the well publicized Iran-contra affair through financial and oversight problems with secret military units, raise considerable concern as to the ethical, ideological and legal rationale for such operations.

In this study I will explore covert action from an ethical or moral standpoint, examine its compatibility with American

democratic ideals, constitutional legality, and the justification or requirement for its use. Several case studies will be described to provide illustrations of the problems inherent in such operations.

This study has been developed from a review of relevant unclassified literature and personal interviews.

### WHAT IS COVERT ACTION?

What constitutes a "covert action"? The latest official definition states that covert action..."means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions."<sup>1</sup>

Another way to describe covert action is to state that it includes "any clandestine activity designed to influence foreign governments, events, organizations, or persons in support of United States foreign policy. Covert action may include political and economic actions, propaganda, and paramilitary activities," and is "planned and executed ... so as to conceal the identity of the sponsor or else to permit the sponsor's plausible denial of the operation."<sup>2</sup>

Covert actions are designed to alter foreign political, economic, or military realities. They are the most controversial of all intelligence activities because in addition to secrecy and deception, they sometimes require lethal force. One must wonder if a free society can engage in covert action and still maintain its fundamental values?

#### ENDNOTES

1. "Executive Order 12333," in Federal Register 46, no. 235, Dec. 8, 1981, pp. 55941-55954, part 3, sec. 3.4(h).

2. U. S. Congress, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Final Report, April 26, 1976, p. 620.



## CHAPTER II

### COVERT ACTION - IN THE BALANCE

Americans have always felt uneasy about covert operations. Secrecy in government is a paradox in an open, democratic society and the idea of covert operations strikes many individuals as downright unethical. Because it is both secret and emotional, covert action is seldom the subject of hard thought. Discussions on it are always controversial, for or against, by assertions either that the world is a nasty place or that covert action is nasty business. The following comments by two former government officials bear witness to this observation. As stated by Ralph W. McGehee, a former CIA official and the author of Deadly

#### Deceits: My 25 Years in the CIA:

The United States cannot continue to destroy freedom throughout the world by means of covert operations without ultimately destroying it at home. Covert operations violate the rights of all Americans: they allow the president to take actions abroad that the American people would never support. By imposing strict rules of secrecy, the president threatens the constitutionally guaranteed freedoms of the American people....Covert operations are an immediate threat both to the peoples of other nations and to our own way of life.<sup>1</sup>

The other side of the story is stated by Ray S. Cline, former CIA and State Department official and senior associate at the Center for Strategic and International Studies at Georgetown University:

We are already engaged in a protracted secret war against the Soviet Union....The United States is faced with a situation in which the major world power opposing our system of government is trying to expand its power by using covert methods of warfare. Must the United States respond like a man in a barroom brawl who will fight only according to the Marquis of Queensberry rules?<sup>2</sup>

The true nature of covert action lies somewhere between these two opposing views. Let us now take a closer look at some of the moral and legal aspects of covert action.

### THE ETHICAL QUESTION

Are covert actions compatible with the Judeo-Christian ethic? Can a free society engage in espionage and covert action without violating its fundamental values? Since covert actions frequently make use of unusual means such as secrecy, deception, and possibly violence that are not normally permissible in peacetime pursuits, they present difficult practical and moral problems.

The security of the United States and the survival of our free institutions are among our highest values. If covert operations are required to maintain the security and survival of our system, how can we reconcile the individual ethical values of our domestic society with the hard requirement to operate in a blantly immoral international system? This conflict has been described by Catholic theologian John Courtney Murray as:

the gulf between individual and collective morality: The private life is governed by the will of God as stated in the Scriptures. It is to bear the stamp of...patience, gentleness, sacrifice, forbearance, trust, compassion, humility, forgiveness of injuries and, supremely and inclusively, love. On the other hand, it is the plainest of historical fact that the public life of the nation-state is not governed by these values. Hardly less plain is the fact that it cannot be.<sup>3</sup>

In the American context, society and the state have a special character and mission structured by a framework of

obligatory, value-oriented goals: to serve and promote the interests of justice, freedom, security, the general welfare, and civil unity or peace. This special set of obligations is quite separate from those that rest, at another level, upon the individual in domestic society. And the moral standards that apply at one level are not the same as those in operation at the other. For those empowered to act in the name of society and the state, the basis for their public morality derives from the nature of political and social reality they confront and from the required goals they must serve. In that context, the centrality of national self-interest, including concern for security or the use of covert action, does not itself raise moral issues as long as the ends of such action remain defined by all the public purposes entrusted to the American state.

Thus the moral situation of the public official is very different from that of a private person. He is the guardian of the national interest, which is composed of the collective societal purposes entrusted to the state. He cannot be generous or charitable to others outside the society at the expense of that trust. This does not, however, license the pursuit of unrestrained, illegal, self-celebrating causes. That would be inconsistent with the overall core values, such as justice and freedom, which set the standards for national behavior.<sup>4</sup>

Based on this reasoning, properly conducted covert action, in and of itself, is neither unethical nor immoral as long as it is performed in the best interests of the United States and in accordance with all applicable legal requirements.

It is in the realm of the personal ethics of those planning, approving and conducting covert actions where the major problem occurs. Covert actions are not, by and large, conducted by people lacking the capacity to recognize ethical standards, but standards are lowered to accommodate the perceived national purpose. Once lowered, they can be more easily lowered a second time, or they can be lowered further and further as routine practice reduces the ethical resistance to repugnant activities. The personnel working with covert operations are obliged by the very nature of their trade to presume that they are operating in hostile environments. The end point of their efforts, after all, is to bypass normal authority, or at the least to use semi-legal means to overcome obstacles placed in their path by the authorities of other nations. The professional premise of the officers engaged in these practices, then, is the constructive use of illegality. While revolutionaries around the world have lived long and comfortably with this paradox, it is quite another matter for sober and presumably accountable U. S. civilian and military officers to be exposed to its temptations.

In fact, some officers working in covert operations have ignored accepted ethical values, possibly due to a lack of proper leadership, guidance or oversight, to the point of illegality. It is not covert operations that must be eliminated, but the conduct of those few officers who succumb to the temptations that the operations present to them.

### IS IT AMERICAN?

In times of great peril, American presidents have never hesitated to resort to espionage. In 1776 George Washington admonished his generals to "leave no stone unturned" in gathering intelligence against the British, and all our wartime presidents since have taken the same view. But what about intelligence activities, such as covert operations, in the twilight zone between peace and war, the condition in which we live today? Can we consider, as Ray Cline states at the beginning of this chapter, that we are already engaged in a protracted secret war against the Soviet Union and that intelligence operations are a form of warfare? It would then follow that covert action, like war, is an extension of diplomacy by other means and it can be conducted as long as it follows a principle or guideline such as those applicable to "just" warfare.

Another side of the question was provided by the U. S. Senate Select Committee to Study Government with Respect to Intelligence Activities, also known as the Church Committee, during its 1975-76 comprehensive investigation of the intelligence community. They stated that "covert operations adopt tactics unworthy of a democracy (or) reminiscent of the tactics of totalitarian regimes to protect U. S. national security."<sup>5</sup> The American Civil Liberties Union has further amplified that theme by stating that covert operations: threatened precepts of shared and balanced power within the federal government, that it would tempt presidents to use secret activity abroad to avoid troublesome intragovernment debate about

American behavior and commitments, that it had been used too often to undermine fundamental freedoms in foreign societies, and that it inevitably colored the perceptions of foreigners about the United States in ways not compatible with America's professed ideals.<sup>6</sup>

Another concern is that those who perform covert operations cannot be relied upon to stay within the bounds of accepted U. S. foreign policy. Covert operations can commit the United States to foreign policy initiatives without public or congressional debate, and without giving citizens the opportunity to express their views either by petitioning the government or by voting against a president because they don't approve of his policies. In a democratic society, it is unacceptable for the president to engage in operations that cannot be tested in a public forum, in Congress or at the ballot box.

As true as these statements may be, in a world populated by devious and determined adversaries, a certain amount of deception in American foreign operations and diplomacy may be excusable, if not necessary. Virtually all experts agree that covert operations are a necessity and that they should meet certain tests - feasibility, proportionality, decency of means - and must be designed so that U. S. interests would not be damaged if an operation were revealed. Although peacetime covert actions may utilize some "unAmerican" or warlike methods, the problem is that in certain situations there seems to be no alternative to their use.<sup>7</sup> But in a democracy, such tactics should be used sparingly, and only when they advance policies favored by the

public, or at least approved by its elected representatives in both the executive and legislative portions of the government.

### IS IT LEGAL?

There are two parts to the question of the legality of covert action. The first concerns the legal basis for the government to conduct such activities and the second deals with the rationale behind the action and its method of implementation.

The Executive Branch of the government is on solid legal ground when it approves the use of covert actions. The legal basis for this activity can be found in the Executive Order on United States Intelligence Activities issued by President Reagan in December 1981 which states in section 1.8(e), that one of the main functions of the CIA is to "conduct special activities approved by the President." The National Security Act of 1947 also states, in section 102d(5), that the CIA can "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." A Congressional position on covert action was voiced by Thomas Polgar, a staff employee of the Iran/contra Congressional committee, during a symposium on Covert Action and Democracy held at Tufts University February 26-27, 1988. He stated that "Covert action, as a policy, exists; it is legal and it is based on funds appropriated by Congress. I see no inclination in Congress to depart from covert action. We simply want more control, to keep covert action in the boundaries of good taste and law."<sup>8</sup>

Although covert action itself is clearly a legal function of the government, the reason for its selection and method of application may require close scrutiny or oversight. There is clear evidence that the executive branch has used covert action as a way to circumvent either established public policy or congressional restraints on foreign policy initiatives. The recent Iran/contra affair is a good example of covert action being used to bypass legal limitations on arms sales and congressional restrictions on support of a foreign insurgency. In this case covert action was selected not to hide the activity from foreign participants, but to conceal the truth from Congress and the American public.

There are additional indications that covert military intelligence organizations have been utilized to circumvent congressional restrictions and reporting requirements levied on the CIA. The U. S. Army's Special Operations Division (SOD) provided the CIA with various types of covert military support in Latin America that the Agency itself was restricted from doing by congressional mandate. The SOD was ultimately closed down because of gross financial improprieties, and several courts-martial resulted.<sup>9</sup>

Once again it is not the policy of covert action that is in doubt, but the motivations of those individuals approving and implementing the actions. Strong control procedures, stringent oversight capabilities, and prompt enforcement of the laws governing such activities are required if covert action is to continue as a powerful tool for the preservation of our



democratic ideals.

### CAN IT BE JUSTIFIED?

Covert action is nothing new in American life. During the early stages of the American Revolution, for example, the French, through covert action, were able to help the colonists fight the British without revealing their involvement. Americans were the beneficiaries of that particular covert action.

The fact that covert operations involve secrecy and deception creates a problem for an open, democratic society. Daniel Patrick Moynihan, vice chairman of the Senate Select Committee on Intelligence, explained this paradox best when he stated:

that the number of things the American people can know about and care about at a given moment is limited, whereas the number of things that the U. S. government might have to be concerned with is a lot greater. That is one reason we have governments. Are there not areas in which the government must act on the basis of a general mandate, rather than specific approbation...if the U. S. Congress is satisfied that an action is legal, the action need not be public, if that would make it unsuccessful or diminish its chances for success.<sup>10</sup>

Additional support for the continuation of covert action was delivered in the Report of the Congressional Committees Investigating the Iran-Contra Affair which stated that covert action..."be authorized and conducted in a manner compatible with the American system of democratic government and the rule of law" and further that "covert operations are a necessary component of our Nation's foreign policy."<sup>11</sup>

Of the covert operations undertaken by the United States, some have been used wisely and some have not, but in most cases the real problem has not been with the covert action as such. It has been with the particular policy the operation was supporting or with the actions of the individuals responsible for managing the program.

For some of these individuals, covert operations can breed a disrespect for the truth. These officials start out lying to the enemy, then to the public, then to Congress. They lie about the essentials, and once they discover how easy that is, they start lying about other aspects of the operation and about many other things. Another possible consequence of covert operations is disrespect for the rule of law. Covert operations involve breaking the laws of other nations, and those who conduct them can come to believe that they can also break U. S. law and get away with it. This is not an indictment of covert action, but of the moral integrity of those individuals selected to oversee, manage and conduct such operations.<sup>12</sup>

Although covert action presents difficulties in being completely compatible with American ethics and ideals, well conceived and properly managed covert actions abroad are politically necessary and morally right. There is no reason to abandon this way of doing things and to adopt or avoid means for action on purely pragmatic or moralistic grounds. Experience has taught us that one does not improve government by removing from it the powers necessary and proper for the fulfillment of its tasks. Rather, one delineates those tasks more closely, seeks to

understand them more fully, and one sees to it that those responsible are held fully accountable for performance.

These lessons apply to intelligence operations as well as most other forms of endeavor. It should not be confused with the ethically untenable proposition that anything may justly be done if it is reasonably understood to advance the interest of the United States. Clearly, the price one pays ought to be proportionate to the benefit achieved. Experience demonstrates that covert actions require continuous and dedicated management to keep them from slipping out of control. The problem is that in certain situations there seems to be no alternative to this dangerous and powerful weapon.

#### ENDNOTES

1. "Forum," Harpers, September 1984, pp. 35-36.
2. Ibid., p. 41.
3. John Courtney Murry, We Hold These Truths: Catholic Reflections on the American Proposition, pp. 265-266.
4. Ibid., p. 272.
5. Morton H. Halperin, "Lawful Wars," Foreign Policy, Fall 1988, p. 179.
6. U. S. Congress, Senate, Select Committee on Intelligence, Hearings on National Reorganization and Reform Act of 1978, pp. 525-581.
7. Tamar Jacoby, "Once Again, Controversy Over Covert Operations," Newsweek, 11 January 1988, pp. 16-17.
8. Jefferson Morley, "The Oddest Couple," Nation, 2 April 1988, p. 450.
9. Steven Emerson, "Secret Warriors," U. S. News & World Report, 21 March 1988, p. 25.
10. "Forum," Harpers, September 1984, p. 46.
11. Morton H. Halperin, "Lawful Wars," Foreign Policy, Fall 1988, p. 177.
12. Morton H. Halperin, "The Case Against Covert Action," Nation, 21 March 1987, p. 363.

### CHAPTER III

#### CASE STUDIES - A CLOSER LOOK

Although covert actions are supposed to remain secret, recent events have led to public congressional and judicial inquiry into the specifics of several operations. The public airing of the details of these "secret" operations has presented an excellent research base for this Military Studies Program project. The selected case studies illustrate many of the problems that are inherent in such operations.

#### IRAN-CONTRA - THE NSC PERSPECTIVE

The Iran-contra affair as it known in the press, is an excellent example of the improper use of covert action. It was originally initiated in October of 1985 by National Security Adviser Robert McFarlane and a member of his staff, Lt. Col. Oliver North, as an arms-for-hostage arrangement with the radical Iranian government. By transferring sophisticated antiaircraft and antitank missiles to Iran, via Israel, in exchange for the anticipated release of American hostages being held by Iranian backed terrorists in Beirut, the administration acted illegally and against stated public policy. This action violated the U. S. embargo of arms to Iran and also ran counter to our public pledge of not negotiating or paying ransom for terrorist held hostages. To further compound their failures, the conspirators decided to inflate the cost of the arms to the Iranians and use the profits to support the contra forces seeking to overthrow the communist

government in Nicaragua. The administration's efforts to support the contras had been stymied by a congressional ban, the Boland amendment, on any such official U. S. action.<sup>1</sup>

These individuals, along with Adm. John Poindexter who replaced McFarlane as National Security Adviser, based upon their own definition of what was right for America, violated the law of the land, ignored stated public policy and, in the case of North, attempted to receive personal financial gain, all in the name of patriotism. Lt. Col. North began his encounter with the Iran-contra Congressional committees with a startling proposition that gets to the heart of the problem - lying in the defense of covert action is no crime, and truthfulness toward the American people is no virtue. North told House committee counsel John Nields Jr. that he considered no lie too big to commandeer for the purposes of presidential policy. He acknowledged that in his mind, deceit is an organic component of covert action and unlike classic espionage in traditional wartime, deception in the modern context is directed toward the home front rather than at the enemy.<sup>2</sup> North is presently standing trial on 12 felony counts. He has been charged with lying to Congress and to a presidential inquiry, obstructing their investigations, with altering and shredding government documents in the process, accepting gifts from a contractor, and converting funds to his own use.<sup>3</sup>

Robert McFarlane, in his May 11, 1987, testimony at the Iran-contra hearings, stated that the president and his advisers "turned to covert action (in Nicaragua) because they thought they could not get Congressional support for overt activities." He

further confessed that he allowed his deputy Lt. Col. North, to alter NSC documents to conceal from congressional investigators evidence of possible violations of the Boland amendment. He also acknowledged that North told him he was planning to throw a "shredding party" to get rid of documents outlining the diversion of Iranian arms sales profits to the contras.<sup>4</sup>

It is obvious that these individuals operated outside the Constitution and the law to implement a policy that Congress had rejected through its undisputed power of the purse. These NSC officers performed the operation covertly not because the foreign policy objectives required that the U. S. role remain undetected, but simply to keep Congress in the dark.

#### IRAN-CONTRA - THE CIA PERSPECTIVE

The second phase of the Iran-contra affair, diversion of profits from arms sales to fund the contras, included the heavy involvement of elements within the CIA. Faced with a Congressional funds cutoff for its top foreign policy goal, the administration found a creative solution: It "privatized" the supply of weapons, advisers and aid to the Nicaraguan rebels. According to the plan, assistance was to be provided by private U. S. citizens, other countries and, eventually, by profits from the arms sales to Iran. White House legal experts bestowed their blessings on the scheme as long as it did not include any "official" military aid, CIA involvement or the expenditure of government funds.<sup>5</sup>

The CIAs involvement began with the establishment of Swiss

bank accounts. In a closed door briefing to the House Select Committee on Intelligence, former CIA Director William Casey said the CIA had set up a "sanitized Swiss bank account, controlled by the contras, to receive money from the Iranian sale."<sup>6</sup> The CIA station chief in Costa Rica, Joseph F. Fernandez, was a main point of contact between the NSC and the contras for the ongoing support. Lt. Col. North had provided Fernandez with a special coding device, called a KL43, that he had obtained from the National Security Agency. With this device Fernandez could communicate in a secure mode, directly to the NSC and bypass his own agency's communications channels. According to independent counsel Lawrence Walsh, Fernandez "minimized and concealed from his superiors at the CIA the true nature of his contacts with North and North's private representatives." He also "used his influence as a representative of the United States" to obtain approval for a clandestine contra airstrip in Costa Rica.<sup>7</sup>

When investigation of North's files showed the station chief to be the main conduit for passage of contra military needs, timing of airdrops, and forwarding of intelligence information the CIA was forced to fire him. Fernandez was indicted in June of 1988 for conspiring to establish a secret arms network for the contras and then lying to investigators to cover it up. Meanwhile CIA Director William Webster has dismissed one additional senior Agency officer and two others have left the Agency after being demoted and reprimanded for their part in the Iran-contra affair.<sup>8</sup>



Joseph Fernandez's personal rationale for supporting this obviously illegal activity is unknown and he has yet to have his day in court to explain. I can only speculate that he may have lost the habit of questioning where he should set the limits on his official conduct. The other officers in his agency who might have been expected to remind him of these limits were kept in ignorance by his own actions. Time and again covert actions have proven to be a strong master that will cause individuals to continuously lower their own ethical standards.

#### SOD - Project SEASPRAY

In February of 1981 the Reagan Administration decided to make permanent the clandestine military intelligence, counterterrorism, aviation and special operations units that were created for the Iran hostage rescue missions. One of these secret elements, the Special Operations Division (SOD), was quickly established with the full support of the Army Chief of Staff, Gen. Edward C. Meyer. Gen. Meyer declared, "I'll be damned if we ever get caught in another Iranian hostage situation where we can't find out what is going on or where we can't get into the country."<sup>9</sup>

The SOD operated as a covert or "black" unit under stringent security cover thus keeping their activities hidden from the scrutiny of the conventional Army. The unit was placed under the control of the Deputy Chief of Staff for Operations and Plans, DCSOPS, a powerful Army staff office that controlled and implemented military operations in the field. Other senior Army

staff elements such as the offices of the Assistant Chief of Staff for Intelligence (ACSI) and the Deputy Chief of Staff for Personnel (DCSPER), not only were outside of the SOD's chain of command, but were not even informed about many of the Division's classified activities. Many generals and colonels were simply circumvented and denied information in areas that previously would have fallen under their jurisdiction and oversight. Equally important was the amount of money at SOD's disposal. The Army leadership authorized the comptroller's office to make funds available upon the Division's request. During the next three years the SOD was able to spend, without Congressional oversight, over \$400 million which came from savings on renegotiated Army contracts and other unspent funds.<sup>10</sup>

Project SEASPRAY, carried out by a joint Army-CIA covert aviation unit, was the initial SOD operation. With CIA assistance a commercial cover company was established and aircraft were purchased for cash on the open market, thus bypassing normal DOD procurement channels. The cash for these transactions came from funds that were "laundered" through a secret Army finance office at Ft. Meade, Md. This action prevented identification of the aircraft as part of the Army inventory. It also allowed them to fly classified missions and not be recognized as part of the U. S. military. The Pentagon is severely limited in setting up such proprietaries, but the CIA is encumbered by very few congressional restrictions. The joint SEASPRAY operation was technically legal and a very effective tool for concealing a covert action capability from congressional oversight.<sup>11</sup>

During the next couple of years, while the Boland amendment was in effect barring the CIA from any actions aimed at overthrowing the Government of Nicaragua, Project SEASPRAY was used to funnel covert military aid into Central America. SOD was instrumental in ferrying Army Special Forces personnel under cover into Honduras, where they trained contra troops for hit-and-run raids into Nicaragua. SOD provided the CIA with rapid firing cannons for the small boats that were used to destroy oil depots during raids along the Nicaraguan coast. They also provided personnel and equipment for the mother ship that supported the mining of the harbors in Nicaragua.

The close relationship between the CIA and SOD was mutually beneficial. SOD, with its virtually unlimited budget and access to aircraft and other equipment, could supply untraceable, and expensive, support for the CIA's Central American operations which were being closely monitored by the press and Congressional committees. The CIA, in turn, provided specialized support for clandestine activities, such as pseudonymous passports for SOD undercover operatives. CIA station chiefs could also convince local officials in third world countries to look the other way when members of SOD needed to land without scrutiny at foreign airports. But most important was the fact that since SOD was not officially involved in intelligence, it provided the CIA with an arguably "legal" way to continue supporting the contras without informing the Congressional intelligence committees.<sup>12</sup>

The Special Operation Division, lacking both adequate military and Congressional oversight, provided the Reagan

Administration, via the CIA, an excellent method of bypassing the legal restraints placed upon them by the Boland amendments.

#### SOD - Project YELLOW FRUIT

In mid 1982 the Special Operations Division commander, Lt. Col. James E. Longhofer, decided to create a top secret program that would provide additional operational security and counterintelligence for the Central American missions, as well as other Army classified operations. The new program was code named YELLOW FRUIT.<sup>13</sup>

To head up this new program, initially located within the Pentagon, Longhofer selected Lt. Col. Dale E. Duncan who had worked closely with SOD since its inception, providing operational security support from his position on the staff of ACSI. The program eventually grew to include a staff of nine, including counterintelligence agents, a deception specialist, high tech surveillance specialists, and a covert funding expert. Duncan's job was, among other things, to make sure that the cover for SOD's operations wasn't blown. His professional life revolved around safe houses, false identities and a constant suspicion of penetrations by foreign intelligence. To improve security, Duncan devised a plan to move the YELLOW FRUIT operation outside the Pentagon and place it under a "black" commercial cover company. The plan was that Duncan and his staff would operate completely under this commercial cover and not be connected to the Pentagon in any way.<sup>14</sup>

To the outside world, Duncan would retire from the Army and set up a "private" consulting firm, which he would call Business Security International, known simply as BSI. It would claim to specialize in assisting domestic firms seeking security for overseas operations. In truth, it would engage in no private commercial business whatsoever. Amazingly, the top Army leadership was never fully briefed about YELLOW FRUIT operating as a commercial cutout, or outside the Pentagon. But in July, 1983, BSI opened in a suite of commercial offices in Annandale, Va., a 15 minute drive from the Pentagon. YELLOW FRUIT members projected the appearance of a very successful business, but the money was flowing too easily. Indeed, maintaining cover became a license to spend money extravagantly.<sup>15</sup>

An internal audit of YELLOW FRUIT in late 1983 turned up enormous inconsistencies in Duncan's financial accounts. These included a \$56,000 receipt for electronic equipment that was not supported by statements from the manufacturer and a \$16,000 expense account statement with no receipts for a domestic trip. The inconsistencies were reported to Longhofer who undertook his own investigation of the situation. After Longhofer gave Duncan a clean bill of health the YELLOW FRUIT staff members took their complaints to the Army leadership who called in the Justice Department and FBI to investigate the situation. As a result of the investigation SOD and YELLOW FRUIT were disbanded and both Longhofer and Duncan, along with several other SOD individuals, were court-martialed for various crimes. At this time Duncan is serving, on appeal, a 10-year sentence at Fort Leavenworth for

his conviction on filing false claims, theft and obstruction of justice. Longhofer has been convicted of conduct unbecoming an officer for obstructing justice and disobeying orders. It was a bitter irony for the elite Army unit. It had succumbed not to enemy spies or terrorists but to its own megalomania, not to mention old-fashioned greed and excess.<sup>16</sup>

The top Army leadership, Chief of Staff John Wickham and his Vice Maxwell Thurman, were shocked at the allegations about YELLOW FRUIT. They had never been fully briefed about the "black operations" run by the Special Operations Division, and literally had no idea what was going on in their own Army. Their predecessors had been relatively indifferent to details and felt that bureaucratic procedures could be bypassed to make sure the job was done, exactly the style that had been adopted by the Special Operations Division. The proximity of the scandal, within the Assistant Chief of Staff level at the Department of the Army, intensified the shock. Officers who were permitted to approve actions on behalf of the top Army leaders had betrayed their trust.<sup>17</sup>

#### ENDNOTES

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5. "U. S. News," U. S. News & World Report, 8 December 1986, p. 22.
6. Ibid. p. 21.
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8. Walter Pincus, "CIA Aide Acts to Lift Reprimand," Washington Post, 1 January 1989, p. A6.
9. Steven Emerson, Secret Warriors, p. 39.
10. Ibid. pp. 42-43.
11. Steven Emerson, "Secret Warriors," U. S. News & World Report, 21 March 1988, p. 27.
12. Seymour M. Hersh, "Who's in Charge Here?," New York Times Magazine, 22 November 1987, pp. 62-71.
13. Steven Emerson, Secret Warriors, p. 96.
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15. Steven Emerson, "Secret Warriors," U. S. News & World Report, 21 March 1988, p. 29.
16. Steven Emerson, Secret Warriors, pp. 155-166.
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## CHAPTER IV

### CONCLUSIONS

I have explored covert action from an ethical or moral standpoint, examined its compatibility with American democratic ideals, constitutional legality, and the justification or requirement for its use. Several case studies have been described to provide illustrations of the problems inherent in such operations.

Covert actions by themselves are within the ethical bounds of a society acting to preserve the security and survival of its governmental system. The case studies graphically illustrate that it is in the realm of the personal ethics of those planning, approving and conducting covert actions where the major problem occurs. These individuals did not often discuss the moral implications of what they were doing. They did not attempt to justify their actions to themselves or to their colleagues. They simply did what their superiors required or what they thought was best for the country or in some cases for themselves. Thus they came to live in a moral vacuum and committed abuses.

Although peacetime covert actions may utilize some "unAmerican" or warlike methods, the problem remains that in certain situations there seems to be no alternative to their use. Simply because a nation is a democracy, it may not disregard with impunity the requirements for survival. Democracies which fail to use the means required to prevail over those who intend their destruction simply perish.



Covert action itself is clearly a legal function of the government since it is based on both Executive Orders and Congressional laws and funding appropriations. But the reason for selecting covert action and its methods of application may require close scrutiny or oversight since there is evidence that the Executive Branch has used it as a way to circumvent either established public policy or Congressional restraints of foreign policy initiatives. Executive Branch officials cannot under the Constitution exclude Congress simply to gain a freer hand on policy. Covert operations are attractive to presidents largely as short cuts around the procedural hassles inherent in a democratic system. But mere inconvenience, unlike threats to national survival, does not excuse illegal or unconstitutional conduct.

Although covert action presents difficulties in being completely compatible with American ethics and ideals, well conceived and properly managed covert actions abroad are politically necessary and morally right. Are additional legal restrictions on covert actions necessary? I say not at this time. If an individual does not have the moral integrity to abide by the existing rules and laws governing the conduct of covert actions, additional legal limitations will not improve their compliance. Congress, after long deliberation following the Iran-contra investigation, refused to enact additional restrictions on the conduct of covert operations.

During the Army War College's annual visit to Congress on April 12, 1989, George Tenet, Staff Director for the Senate

Intelligence Committee, was asked if another Iran-contra or YELLOW FRUIT situation could develop again. Mr. Tenet replied that:

Yes, they can happen again! The Congressional Intelligence Committees are aware that the Executive Branch of the government can perform covert operations without advising them. The committees also feel that some covert operations are required, that additional legislation was not appropriate since adequate laws were already in force, and it was up to the President to determine if he wanted to stay within the legal limits. The main protection against abuse of covert action is the close working relationship between the Congressional Committees and members of the Executive Branch coupled with the high ethical standards and personal integrity of those individuals associated with such actions.

I agree with this premise and can only hope that those officials associated with covert action believe in a statement made by Michael Josephson, a Loyola Marymount University law professor who has founded a new institute for ethical studies. Ethicist Josephson stated that: "Unethical conduct is always self-destructive and generates more unethical conduct until you hit the pits. The challenge is not always being ethical or paying a big price. The challenge is to be ethical and get what you want. I think you can do it almost every time."<sup>1</sup>

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